Zango Inc v. PC Tools Pty Ltd Doc. 18

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ZANGO, INC. , Plaintiff, v. PC TOOLS PTY, LTD., Defendant.	Case No. 07-CV-00797 JCC **DECLARATION OF NEILL WHITEHEAD IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND IMPROPER VENUE**

I, Neill Whitehead, being first duly sworn, state as follows:

1. I am the Chief Financial Officer for PC Tools Research Pty Ltd, which owns PC Tools Pty Ltd as a wholly-owned subsidiary. I have personal knowledge of the matters stated in this Declaration. The source of my information is my own personal knowledge and information provided to me by other representatives of PC Tools Research Pty Ltd.

2. PC Tools Research Pty Ltd is a privately-held corporation organized under the laws of the country of Australia, with its principal place of business in Sydney, Australia. PC Tools Research Pty Ltd makes all decisions regarding classification of third-party software programs (*e.g.*, malicious, etc.) in Australia. The Malware Research Centre referenced in Zango's complaint is located in PC Tools Research Pty Ltd's Sydney, Australia office. All of the people involved in the classification of Zango's software over the past several years reside in or around Sydney, Australia and work in PC Tools Research Pty Ltd's office in Sydney, Australia. All

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dealings between PC Tools and Google relating to Spyware Doctor Starter Edition's inclusion in the Google Pack are handled by people residing in or around Sydney, Australia and working in PC Tools Research Pty Ltd's office in Sydney, Australia.

3. PC Tools, Inc. is a sister-company. PC Tools, Inc. and PC Tools Research Pty Ltd have different direct parent companies, and only the same ultimate parent company. PC Tools, Inc. is incorporated in Delaware, and its principal place of business is in San Francisco, California. PC Tools, Inc. provides marketing and software support services for products developed by PC Tools Research Pty Ltd, an Australian sister-company. PC Tools, Inc. is not responsible for making decisions regarding classification of third-party software programs, has not made any decisions regarding classification of third-party software programs, and did not make any of the classification decisions Zango makes the subject of its complaint. PC Tools, Inc. has had no dealings with Google relating to Spyware Doctor Starter Edition's inclusion in the Google Pack.

4. As best as we can tell, the first communication PC Tools Research Pty Ltd had with Zango was initiated by Zango. As best as we can tell, PC Tools Research Pty Ltd has not initiated communication with Zango regarding independent subject matter that was not already initiated by Zango. PC Tools, Inc. has not had any contact with Zango.

5. PC Tools Research Pty Ltd and PC Tools, Inc:

a. Have not owned or leased real or personal property in the state of Washington;

b. Have not owed or been required to pay taxes in the state of Washington;

c. Have not maintained an office in the state of Washington;

d. Have not had employees or contractors in the state of Washington;

e. Have not solicited or entered into agreements with resellers or affiliates known to be Washington residents or because they were Washington residents;

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f. Have not conducted business with Zango over PC Tools' or Zango's websites;

g. Have not conducted advertising (print, radio, TV, or online) that was directed or circulated to only Washington residents or a small number of states including Washington;

h. Have not conducted promotions directed only to Washington residents or a small number of states including Washington; and

i. Have not sponsored events in Washington or a small number of states including Washington.

6. Regarding the level of activity seen from Washington residents in relation to PC Tools and to Spyware Doctor, our information from Google Analytics is that for the one-month period April 26 to May 26, 2007, only 0.59% of all web traffic to PC Tools' website can be identified as coming from Washington state. As to the number of downloads of Spyware Doctor from Washington state during that period, only 0.07% of the total downloads were from Washington state, which includes both free and paid downloads.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my personal knowledge.

Neill Whitehead

29th May 2007
Date

HOLLAND & HART LLP
555 Seventeenth Street, Suite 3200
Denver, Colorado 80202

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons:

- **Michael Rosenberger**
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DATED: May 31, 2007 at Seattle, Washington.

/s/ ____________________
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